

Message Text

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70

ACTION ARA-10

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-01 INR-05 L-02

NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15

USIA-06 AID-05 EB-07 CIEP-01 TRSE-00 STR-01 OMB-01

CEA-01 COME-00 FRB-01 XMB-02 OPIC-03 LAB-04 SIL-01

TAR-01 AGR-05 SWF-01 IO-10 /097 W

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R 041828Z DEC 74

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 3008

INFO AMEMBASSY ASUNCION

AMEMBASSY BOGOTA

AMEMBASSY BRASILIA

AMEMBASSY CARACAS

AMEMBASSY BUENOS AIRES

AMEMBASSY LA PAZ

AMEMBASSY MEXICO

AMEMBASSY MONTEVIDEO

AMEMBASSY QUITO

AMEMBASSY SANTIAGO

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E.O. 11652: N/A

TAGS: ECIN, EINV, LAFTA, XM

SUBJECT: ANDEAN PACT: TREATMENT OF FOREIGN CAPITAL WITHIN LAFTA

REF: LIMA 10211

1. THE THIRD ROUND OF MULTILATERAL NEGOTIATIONS AMONG LAFTA COUNTRIES IS SCHEDULED FOR DECEMBER 2 THROUGH 7 IN MONTEVIDEO.

REFTEL SUMMARIZES THE PRINCIPAL ISSUES. SOME OF THE DRAFT RESOLUTIONS UNDER CONSIDERATION INCLUDE RESTRICTIONS ON FOREIGN CAPITAL, AS OUTLINED AND COMMENTED ON BELOW.

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2. AT THE SECOND ROUND OF MULTILATERAL NEGOTIATIONS, SEPTEMBER 23-28 IN QUITO, INTAL PRESENTED AN ANALYSIS OF EXISTING LEGAL PROVISIONS IN THE ELEVEN COUNTRIES REGARDING TREATMENT OF FOREIGN CAPITAL. IN DISCUSSIONS WHICH FOLLOWED, ARGENTINA, BOLIVIA, COLOMBIA, ECUADOR, MEXICO, PERU AND VENEZUELA CONCURRED THAT THE HARMONIZATION OF THE TREATMENT ACCORDED FOREIGN CAPITAL IS AN ESSENTIAL ELEMENT OF INTEGRATION. CHILE INDICATED THAT IT WOULD BE DISPOSED TO PARTICIPATE IN SUCH HARMONIZATION IF THE EVOLUTION OF THE LAFTA INTEGRATION PROCESS JUSTIFIED IT. BRAZIL AND PARAGUAY DECLARED THAT TREATMENT OF FOREIGN CAPITAL SHOULD BE REGULATED EXCLUSIVELY BY NATIONAL AUTHORITIES.

3. AT AD HOC WORKING GROUP MEETING, OCTOBER 7 TO NOVEMBER 1 IN MONTEVIDEO, ARGENTINA PRESENTED A DRAFT RESOLUTION TO RESTRICT PARTICIPATION IN LAFTA COMPLEMENTATION AGREEMENTS TO NATIONAL LATIN AMERICAN ENTERPRISES. BRAZIL CONSIDERED THIS PROPOSAL TO BE A FOREIGN CAPITAL CONTROL MEASURE AND REITERATED THE POSITION IT HAD EXPRESSED ON THIS ISSUE IN QUITO.

4. ANDEAN PACT COMMISSION ENDORSED FOREGOING ARGENTINE PROPOSAL AT ITS NOVEMBER 12-14 MEETING IN LIMA. TEXT OF THIS PROPOSAL WAS SLIGHTLY MODIFIED AND WILL BE PRESENTED AS AN ANDEAN-ARGENTINE INITIATIVE AT THE DECEMBER 2-7 MEETING IN MONTEVIDEO. NATIONAL LATIN AMERICAN ENTERPRISES ARE DEFINED AS THOSE IN WHICH NATIONAL INVESTORS ARE THE MAJORITY STOCKHOLDERS AND IN WHICH THIS MAJORITY IS REFLECTED IN THE TECHNICAL, FINANCIAL, ADMINISTRATIVE AND COMMERCIAL MANAGEMENT OF THE FIRMS. THE KEY ELEMENTS ARE ORIGIN AND COMPOSITION OF THE CAPITAL, COMPOSITION OF DIRECTORATE, COUNTRY OF ORIGIN OF INVESTORS AND TYPE OF TECHNOLOGY.

5. INDIRECTLY RELATED TO FOREIGN INVESTMENT IS THE ISSUE OF MULTINATIONAL ENTERPRISES. AT QUITO MEETING ALL COUNTRIES EXCEPT BRAZIL AGREED IN PRINCIPLE TO ESTABLISHMENT OF LEGAL FRAMEWORK FOR "BINATIONAL AND PLURINATIONAL LATIN AMERICAN ENTERPRISES." ARGENTINA SUBSEQUENTLY DEVELOPED THIS CONCEPT INTO A DRAFT RESOLUTION. LATIN AMERICAN CAPITAL WOULD HAVE TO HAVE A CONTROLLING INTEREST IN SUCH ENTERPRISES. AN EXCEPTION TO THIS RULE WOULD BE ENTERPRISES WITH PUBLIC SECTOR EQUITY LIMITED OFFICIAL USE

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PARTICIPATION.

6. THE ANDEAN PACT IS BASICALLY IN FAVOR OF ARGENTINE PROPOSAL ON LATIN AMERICAN MULTINATIONAL ENTERPRISES. HOWEVER, POOR RESULTS TO DATE WITH STATUTE FOR ANDEAN MULTINATIONAL ENTERPRISES (DECISION 46) PROMPTED THE ANDEAN COUNTRIES TO SUGGEST FURTHER STUDY OF THIS ISSUE.

7. COMMENT: THERE HAS BEEN CRITICISM IN INTEGRATION CIRCLES
OF THE PREDOMINANT ROLE OF FOREIGN FIRMS IN SOME OF THE
CURRENT LAFTA COMPLEMENTATION AGREEMENTS. ALTHOUGH IT IS
DOUBTFUL THAT LAFTA RESTRICTIONS ON FOREIGN CAPITAL WILL BE
FORMALLY ADOPTED, VARIOUS NATIONAL LEGISLATION ON THIS SUBJECT
CAN BE EXPECTED TO AFFECT FOREIGN FIRMS IN BOTH BILATERAL AND
MULTILATERAL TRADE AND INVESTMENT ACTIVITIES IN LATIN AMERICA.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETINGS, REORGANIZATIONS, NEGOTIATIONS, CAPITAL FLIGHT
Control Number: n/a
Copy: SINGLE
Draft Date: 04 DEC 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: izenbei0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974LIMA10234
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740352-0429
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741262/aaaacaro.tel
Line Count: 123
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: LIMA 10211
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 05 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05 SEP 2002 by boyleja>; APPROVED <13 MAR 2003 by izenbei0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ANDEAN PACT: TREATMENT OF FOREIGN CAPITAL WITHIN LAFTA
TAGS: ECIN, EINV, XM, ANDEAN PACT, LAFTA
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005